

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	1:05-cv-00594 OWW SMS
)	
Plaintiff,)	MEMORANDUM DECISION AND
)	ORDER RE DEFENDANT'S MOTION
v.)	TO DISMISS AND MOTION FOR
)	SUMMARY JUDGMENT
STEVE HEMPFLING, d/b/a FREE)	
ENTERPRISE SOCIETY,)	
)	
Defendant.)	
)	

I. INTRODUCTION

Defendant STEVE HEMPFLING, d/b/a FREE ENTERPRISE SOCIETY ("Defendant" or "HEMPFLING"), moves to dismiss Plaintiff's claim under 26 U.S.C. § 6700. Defendant also states that he moves "in the alternative" for summary judgment. Plaintiff, the UNITED STATES OF AMERICA ("Plaintiff" or "Government"), opposes Plaintiff's motions.

II. PROCEDURAL HISTORY

On May 2, 2005, the Government filed a complaint seeking a permanent injunction against Defendant pursuant to 26 U.S.C.

1 § 7402(a) and § 7408 to enjoin him from violating and interfering
2 with the administration of the internal revenue laws, including
3 violating 26 U.S.C. § 6700 and § 6701. (Doc. 1, Compl.)
4 Defendant, initially proceeding *pro se*, filed his "Motion to
5 Dismiss or in the alternative for Summary Judgment" on June 29,
6 2005. (Doc. 8, Def.'s Mem.; see also Doc. 7, Motion; Doc. 9,
7 Hempfling Decl.) Defendant has since acquired legal
8 representation. He is now represented by counsel in this matter.
9 (Doc. 29, "Order Attorney William R. McPike added for Steven
10 Hempfling", filed August 3, 2005) Defendant moves to dismiss the
11 Government's § 6700 claim and its claim for an injunction under
12 26 U.S.C. § 7402 pursuant to Federal Rule of Civil Procedure
13 12(b)(6). Defendant also argues that the Government should be
14 equitably estopped from bringing this case against him. The
15 estoppel argument is construed as a motion for summary judgment.
16 However, Defendant filed no Statement of Undisputed Facts, as is
17 required by Local Rule 56-260(a) of the Local Rules for the
18 Eastern District of California ("Local Rules").

19 The Government opposes. (Doc. 12, Pl.'s Opp., filed July
20 20, 2005; see also Docs. 13-22, attachments) The Government also
21 moves to continue the motion for summary judgment and for
22 additional time to conduct discovery pursuant to Federal Rule of
23 Civil Procedure 56(f). Plaintiff replied and opposes the Rule
24 56(f) motion for time. (Doc. 25, filed August 1, 2005)

25 Oral argument was heard on September 12, 2005. Robert
26 Metcalfe, Esq., appeared on behalf of the Government. Defendant
27 Steve Hempfling was present and William McPike, Esq., appeared on
28 his behalf.

1 III. BACKGROUND

2
3 A. Summary of Pleadings.

4 The facts as alleged in the complaint are taken as true for
5 the purpose of a motion to dismiss. *TwoRivers v. Lewis*, 174 F.3d
6 987, 991 (9th Cir. 1999).

7 The Government alleges that Defendant engages in a number of
8 activities in violation of the internal revenue laws, including
9 26 U.S.C. §§ 6700 and 6701. The Government requests an
10 injunction pursuant to 26 U.S.C. §§ 7402 and 7408(a), enjoining
11 Defendant from engaging in conduct in violation of §§ 6700 and
12 6701, including but not limited to making false statements
13 regarding tax benefits to be derived from a tax shelter and
14 assisting others in the preparation of tax forms. (See Doc. 1,
15 Compl. ¶¶ 3-4)

16 The Government's claims arise out of various activities by
17 Defendant, including but not limited to conducting seminars,
18 selling commercial tax products, charging membership fees in the
19 "Free Enterprise Society" (which has optional membership fees for
20 a "civil support service" and a "legal defense fund"), and
21 posting advertisements for his commercial tax products on his
22 website (www.freeenterprisesociety.com). (*Id.* at ¶¶ 8-11, 15)
23 Through these activities, the Government alleges that Defendant
24 "falsely purport[s] to demonstrate that: (1) there is no law
25 requiring individuals to file federal income tax returns or pay
26 income taxes; and (2) if Hempfling's customers choose to stop
27 filing tax returns, then Hempfling's 'Reliance 2000' package
28 would defeat any charge of willful failure to file a tax

1 return.”¹ (*Id.* at ¶ 9)

2 Hempfling offers a “Reliance 2000” program that the
3 Government claims is used to facilitate, encourage, and assist
4 Hempfling’s customers to commit willful failure to file an income
5 tax return. (*Id.* at ¶ 12) The “Reliance 2000” Program has four
6 steps: (1) buy (for \$80) and read a two-volume book by William
7

8 ¹ Specific examples of fraudulent statements made by
9 Hempfling in his commercial tax products (including the Reliance
10 2000 package, the W4 package, and seminar materials) include:

- 11 a. “There is **No Law** that Requires an Individual to
12 file income tax returns.” (2005 seminar flyer,
13 emphasis supplied)
- 14 b. “The income tax has never been anything but
15 voluntary.” (website description of Seminar 1)
- 16 c. “Over 1500 Reasons Why It May No [sic] Be A Good
17 Idea To File INCOME Tax Returns. The Choice Is
18 Yours.” (website description of Seminar 8901)
- 19 d. “IRS Liens and Levies Are Unenforceable.”
20 (website description of Seminar 9201)
- 21 e. “[The Reliance 2000 package] will help stop
22 Failure to File charges, and if charged, will make
23 a very formidable defense.” (website description
24 of Reliance 2000)
- 25 f. “[The procedure set out in the W4 Alternative
26 Withholding Package] can mean more take home pay
27 as this procedure stops the federal withholding
28 from your paycheck.” (description of W-4 package)
- g. “The above programs are designed for income tax
filers or non-filers alike. For non-filers these
programs are **essential to respond legally to the
taxing agencies.**” (membership information,
emphasis supplied)

(Doc. 1, Compl. ¶ 16)

1 "Bill" Benson titled *The Law That Never Was*, which falsely
2 concludes that the Sixteenth Amendment was never ratified;
3 (2) buy (for \$250) *The 16th Amendment Reliance Package* from
4 Hempfling, which contains the "initial research" for Benson's
5 book; (3) buy (for \$50-75) and send Hempfling's *Redress of*
6 *Grievance Letter Package* to the President, congressmen, and
7 senators, which asks the recipients to answer questions about the
8 ratification of the Sixteenth Amendment; and (4) buy (for \$150
9 and up) and file Hempfling's federal lawsuit package "asking for
10 an answer to the 16th Amendment question"). (*Id.*)

11 Furthermore, Hempfling advises his customers to purchase his
12 Reliance 2000 program, take these four steps, and stop filing tax
13 returns, in order to later be able to raise a good-faith defense
14 against tax evasion. (*Id.* at ¶ 13) Hempfling bases his advice
15 on the United Supreme Court's decision in *United States v. Cheek*,
16 498 U.S. 192, 203 (1991), which held that an honest, good-faith
17 belief, no matter how unreasonable, that one was not required to
18 pay taxes or to file a tax return could defeat a "willfulness"
19 finding. The Government alleges that "in essence, Hempfling's
20 Reliance 2000 program is a ready-made--and entirely fraudulent--
21 *Cheek* defense." (*Id.*)

22 Hempfling runs a club or organization called the "Free
23 Enterprise Society," through which he promotes his commercial tax
24 products (including Reliance 2000 as well as a "W4 Package") and
25 for which membership costs \$45 per year. Members may attend
26 seminars at no additional charge. (*Id.*)

27 Members of the Free Enterprise Society may join the "civil
28 support service" for an additional \$20 per year, not including

1 additional fees for letter-writing, brief-writing, and other one-
2 on-one services. (*Id.* at ¶ 10) Members may also join (for \$950
3 for the first year and \$300 for each additional year) the "legal
4 defense fund," which is described by Hempfling "as protection for
5 those who have chosen to take the 'political stand' that they are
6 not required to file federal income tax returns." (*Id.* at ¶ 10)
7 Hempfling promises to pay for fund members' legal representation.
8 (*Id.* at ¶ 14) The Government further alleges that "the legal
9 defense fund also facilitates, encourages, and assists
10 Hempfling's customers to evade the payment of federal income
11 taxes." (*Id.* at ¶ 11)

12 Plaintiff also has a website (www.freeenterprisesociety.com)
13 on which he sells the same commercial tax products described
14 above, as well as books and other materials. The Government
15 seeks only to enjoin Hempfling from advertising or distributing
16 those materials that are subject to penalties under § 6700 or §
17 6701. (*Id.* at ¶ 15)

18
19 **B. Background Re Estoppel Claim.**

20 Defendant's summary judgment argument is that the Government
21 should be estopped from bringing this action against him.
22 Defendant bases this argument on a telephone conversation he had
23 with the attorney representing the Government in this case,
24 Evan Davis, in July 2004. Defendant states that Mr. Davis led
25 him "to believe that the Government was satisfied that the
26 defendant was neither promoting nor selling anything which would
27 be considered an abusive tax shelter." (Doc. 8, Def.'s Mem. 16)
28 Defendant asserts that the statements made by Mr. Davis during

1 the July 2004 telephone conversation led Defendant to believe
2 that his conduct was not illegal. Defendant claims that Mr.
3 Davis informed Defendant that "it did not appear to him [i.e., to
4 Mr. Davis] that from what he had seen that [Defendant] would fall
5 under 26 U.S.C. Section 6700 and that he was undecided as to how
6 to proceed with [the] case." (Doc. 9, Hempfling Decl. ¶ 16)

7
8 **IV. LEGAL STANDARDS**
9

10 **A. Motion to Dismiss Under Federal Rule of Civil Procedure**
11 **12(b)(6).**

12 Fed. R. Civ. P. 12(b)(6) allows a defendant to attack a
13 complaint for failure to state a claim upon which relief can be
14 granted. A motion to dismiss under Fed. R. Civ. P. 12(b)(6) is
15 disfavored and rarely granted: "[a] complaint should not be
16 dismissed unless it appears beyond doubt that plaintiff can prove
17 no set of facts in support of his claim which would entitle him
18 to relief." *Van Buskirk v. CNN, Inc.*, 284 F.3d 977, 980
19 (9th Cir. 2002) (citations omitted). In deciding whether to
20 grant a motion to dismiss, the court "accept[s] all factual
21 allegations of the complaint as true and draw[s] all reasonable
22 inferences in favor of the nonmoving party." *TwoRivers v. Lewis*,
23 174 F.3d 987, 991 (9th Cir. 1999).

24 "The court need not, however, accept as true allegations
25 that contradict matters properly subject to judicial notice or by
26 exhibit. Nor is the court required to accept as true allegations
27 that are merely conclusory, unwarranted deductions of fact, or
28 unreasonable inferences." *Sprewell v. Golden State Warriors*,

266 F.3d 979, 988 (9th Cir. 2001) (citations omitted). For example, matters of public record may be considered under Fed. R. Civ. P. 201, including pleadings, orders and other papers filed with the court or records of administrative bodies. See *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Conclusions of law, conclusory allegations, unreasonable inferences, or unwarranted deductions of fact need not be accepted. See *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

B. Pleading Fraud Under Federal Rule of Civil Procedure 9(b).

Rule 9(b) of the Federal Rules of Civil Procedure states that:

In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

A complaint alleging fraud meets the Rule 9(b) standard if it alleges the time, place, and content of the fraudulent statements, including reasons why the statements are false. *In re GlenFed., Inc., Securities Litig.*, 42 F.3d 1541, 1547-48 (9th Cir. 1994) (en banc), *rev'd on other grounds*, 60 F.3d 591 (9th Cir. 1995). Where fraud allegedly occurred over a period of time, however, Rule 9(b)'s requirement that the circumstances of fraud to be stated with particularity are less stringently applied. See *Fujisawa Pharm. Co., Ltd. v. Kapoor*, 814 F. Supp. 720, 726 (N.D. Ill. 1993); *U.S. ex rel. Semtner v. Med.*

1 *Consultants, Inc.*, 170 F.R.D. 490, 497 (W.D. Okla. 1997).

2 One of the purposes behind Rule 9(b)'s heightened pleading
3 requirement is to put defendants on notice of the specific
4 fraudulent conduct in order to enable them to adequately defend
5 against such allegations. See *In re Stac Elec. Litig.*, 89 F.3d
6 1399, 1405 (9th Cir. 1996). Furthermore, Rule 9(b) serves "to
7 deter the filing of complaints as a pretext for the discovery of
8 unknown wrongs, to protect [defendants] from the harm that comes
9 from being subject to fraud charges, and to prohibit plaintiffs
10 from unilaterally imposing upon the court, the parties and
11 society enormous social and economic costs absent some factual
12 basis." *Id.*

13 14 V. ANALYSIS

15 16 A. Heightened Pleading Standard Under Rule 9(b).

17 Hempfling argues that the Government's claim for violation
18 of § 6700 should be dismissed because the Government's
19 allegations fail to meet the heightened pleading standard set
20 forth in Rule 9(b) of the Federal Rule of Civil Procedure. The
21 Government argues that the Rule 9(b) pleading standard does not
22 apply to claims alleging violation of § 6700, and notes that
23 there are no cases holding that Rule 9(b)'s heightened pleading
24 standards apply to such claims. Hempfling does not dispute that
25 there are no cases holding that Rule 9(b) applies to claims for
26 violation of § 6700, although he argues that such pleading
27 standards nevertheless apply to § 6700 claims. Hempfling relies
28 on cases holding that Rule 9(b) applies to allegations of

1 violations of statutes that contain the words "false or
2 fraudulent." He argues that § 6700 contains the words "false or
3 fraudulent," and that Rule 9(b) therefore also applies to § 6700
4 claims.

5 First, Hempfling does not dispute the Government's
6 contention that there are no cases holding that the Rule 9(b)
7 heightened pleading standard applies to § 6700 claims.² The
8 court has also not located any such authority. The Government
9 argues that Rule 9(b) does not apply because application of
10 § 6700 is "directed primarily at false statements and not at the
11 traditional badges of fraud." (Doc. 12, Pl.'s Opp. 2) The
12 Government does not expand on this argument, nor does it define
13 what it means by "badges of fraud." Based on the cases the
14 Government cites in support of its argument, it can be inferred
15 that the Government essentially argues that the five traditional
16 elements of fraud are not considered by the court in evaluating
17 claims under § 6700.³

18 The five traditional elements of fraud are:

- 19 (1) misrepresentation of a material fact;
20 (2) knowledge of falsity (scienter);
21 (3) intent to defraud;

22
23 ² Hempfling argues that the Government cites an unpublished
24 case, *Noske v. United States*, 1992 WL 134723, 69 A.F.T.R.2d 92-
25 810, 92-1 USTC P 50,247, because it was not published in the
official reporter, the Federal Supplement. *Noske* was, however,
published in the American Federal Tax Reporter.

26 ³ The cases the Government cites are: *United States v.*
27 *Estate Preservation Servs.*, 202 F.3d 1093 (9th Cir. 2000); *United*
28 *States v. Schiff*, 379 F.3d 621 (9th Cir. 2004); *United States v.*
Kaun, 827 F.2d 1144 (7th Cir. 1987).

(4) justifiable reliance; and

(5) resulting damages.

Lazar v. Super. Ct., 12 Cal. 4th 631, 638 (1996).

The elements of a § 6700 claim are:

(1) the defendants organized or sold, or participated in the organization or sale of an entity, plan, or arrangement;

(2) defendants made or caused to be made false or fraudulent statements concerning the tax benefits to be derived from the entity, plan, or arrangement;

(3) defendants know or had reason to know that the statements were false (scienter);

(4) the false or fraudulent statements pertained to a material matter; and

(5) an injunction is necessary to prevent recurrence of that conduct.

26 U.S.C. § 6700; *United States v. Estate Preservation Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000). Three elements of a § 6700 claim, read together, are the same as two elements of a fraud claim, i.e., misrepresentation of a material fact and scienter.

The Ninth Circuit has recently held that certain claims that are not outright fraud claims, but are instead based on allegations of fraudulent conduct, must be plead with particularity in accordance with Rule 9(b)'s particularity requirement. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103-4 (9th Cir. 2003); see also *In re Syncor ERISA Litig.*, 351 F. Supp. 2d 970 (C.D. Cal. 2004) (applying *Vess* in ERISA context); *In re Daou Sys. Inc. Securities Litig.*, 411 F.3d 1006 (9th Cir. 2005) (applying *Vess* in securities fraud litigation). Defendant cites to *Vess* and *In re Daou*, as well as to two other cases that do not

1 cite to *Vess* but nevertheless apply Rule 9(b)'s particularity
2 requirements in fraud-related contexts.⁴ *Bly-Magee v. State of*
3 *California*, 236 F.3d 1014, 1018 (9th Cir. 2001) (decided before
4 *Vess*, but applying Rule 9(b)'s particularity requirements to
5 allegations of violations of the Federal False Claims Act);
6 *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065-66 (9th Cir.
7 2004) (where claim alleged was RICO violation, court does not
8 apply or cite to *Vess*, although notes that Rule 9(b) has long
9 been applied in RICO cases and cites supporting authority).

10 In *Vess*, the Ninth Circuit distinguished between two types
11 of claims. First, there are cases where a plaintiff alleges that
12 the defendant engaged in fraudulent conduct and where the
13 plaintiff relies entirely upon that course of conduct as the
14 basis of its claim. *Vess*, 317, F.3d at 1103-04. In such cases,
15 the complaint is considered to be "grounded in fraud," and Rule
16 9(b)'s particularity requirement applies to the entire complaint.
17 *Id.* Second, there are cases where a plaintiff alleges a
18 defendant engaged in some fraudulent conduct and some non-
19 fraudulent conduct, and the plaintiff relies on both types of
20 conduct to support its claim. *Id.* at 1104. In such cases, Rule
21 9(b)'s particularity requirement does not apply to the complaint
22 as a whole, but instead applies to the averments of fraudulent
23 conduct only. *Id.*

24 The issue is whether Rule 9(b)'s particularity requirement
25

26 ⁴ Defendant actually cites to an earlier version of *In re*
27 *Daou, In re Daou Sys., Inc., Securities Litig.*, 397 F.3d 704
28 (9th Cir. 2005), which was amended and superceded by 397 F.3d
704, the version of the case that is cited here.

1 applies to § 6700 claims. Under *Vess*, it appears that it does,
2 at least as to the allegations relating to allegedly fraudulent
3 conduct. The parties cited no cases, and the court found none,
4 that applied Rule 9(b) to § 6700. Likewise, there are also no
5 cases holding that Rule 9(b) does not apply to § 6700. Whether
6 or not Rule 9(b) applies, Defendant is entitled to know the time
7 frame of allegedly fraudulent conduct, as discussed below.

8 Here, the Government bases its § 6700 claim on allegedly
9 false and fraudulent statements by Plaintiff at seminars, on his
10 website, and in his commercial tax products. While the
11 Government maintains that Rule 9(b)'s particularity requirement
12 does not apply to § 6700, it argues in the alternative that its
13 complaint is sufficient under Rule 9(b). Allegations of fraud
14 must include the time, place, and nature of the fraudulent
15 statements, including reasons why the statements are false.
16 *In re GlenFed.*, 42 F.3d at 1547-48. The claims must include the
17 "the who, what, when, where, and how" of the allegedly fraudulent
18 conduct so that the Defendant may adequately defend against the
19 allegations. *Vess*, 317 F.3d at 1106 (quoting *Cooper v. Pickett*,
20 137 F.3d 616, 627 (9th Cir. 1997)). Defendant does not dispute
21 that the Government's complaint adequately pleads the "who and
22 what." The Government's complaint sufficiently alleges that it
23 was Plaintiff who made the allegedly false statements to
24 individuals who participated in his seminars, visited his website
25 (www.freeenterprisesociety.com), and purchased his commercial tax
26 products. (See Doc. 1, Compl. ¶¶ 9, 12, 15) In addition,
27 Defendant's complaint contains sufficient allegations of examples
28

1 of the content of the allegedly false statements.⁵

2 Defendant argues that the Government fails to allege the
3 "when, where, and how." Taking the last question first, the
4 Government's complaint sufficiently alleges the reasons why
5 Defendant's allegedly false statements are false. Defendant's
6 statements, including those to the effect that there is no

7
8 ⁵ The Complaint lists the following examples of allegedly
9 false statements made in Defendant's commercial tax products:

- 10 a. "There is No Law that Requires an Individual to
11 file income tax returns."
12 b. "The income tax has never been anything but
13 voluntary."
14 c. "Over 1500 Reasons Why It May No [sic] Be A Good
15 Idea To File INCOME Tax Returns. The Choice Is
16 Yours."
17 d. "IRS Liens and Levies Are Unenforceable."
18 e. "[The Reliance 2000 package] will help stop
19 Failure to File charges, and if charged, will make
20 a very formidable defense." If the Reliance 2000
21 steps are followed, an individual can collect
22 sufficient evidence to prove a good-faith defense
23 based on the Supreme Court's decision in *United*
24 *States v. Cheek*, 498 U.S. 192 (1991).
25 f. "[The procedure set out in the W4 Alternative
26 Withholding Package] can mean more take home pay
27 as this procedure stops the federal withholding
28 from your paycheck."
29 g. "The above programs are designed for income tax
30 filers or non-filers alike. For non-filers these
31 programs are essential to respond legally to the
32 taxing agencies."
33 h. The Sixteenth Amendment was never ratified.

(Doc. 1, Compl. ¶¶ 14, 16, 12)

1 requirement to pay income tax, IRS liens are unenforceable, and
2 that a sufficient "good-faith" defense can be established if
3 Defendant's advice is followed, and the Sixteenth Amendment was
4 never ratified are false and misleading. See, e.g., *Schiff*, 269
5 F. Supp. 2d at 1268-69.

6 Defendant is correct, however, that Plaintiff's complaint
7 fails to allege where or when the seminars took place and the
8 commercial tax products were sold. While Rule 9(b)'s
9 particularity requirement is not as stringently applied where
10 fraud is alleged to have occurred over a longer period of time,
11 Plaintiff's complaint lacks even a range of dates during which
12 Plaintiff held his seminars, posted information on his website,
13 and sold his products. Allegations of the location of the
14 seminars would also serve Rule 9(b)'s purpose to protect
15 Defendant against the potential "pretext for the discovery of
16 unknown wrongs." *In re Stac Elec.*, 89 F.3d at 1405.

17 Defendant's motion to dismiss the Government's § 6700 claim
18 for failure to comply with Rule 9(b) is **GRANTED**. The Government
19 is granted **LEAVE TO AMEND** to add allegations relating to when and
20 where the alleged violations occurred.

21
22 **B. Defendant's Rule 12(b)(6) Motion to Dismiss Plaintiff's**
23 **Claim Under 26 U.S.C. § 6700.**

24 The elements of a § 6700 claim are:

- 25 (1) the defendants organized or sold, or
26 participated in the organization or sale
of an entity, plan, or arrangement;
27 (2) defendants made or caused to be made
28 false or fraudulent statements
concerning the tax benefits to be

derived from the entity, plan, or arrangement;

(3) defendants know or had reason to know that the statements were false (scienter);

(4) the false or fraudulent statements pertained to a material matter; and

(5) an injunction is necessary to prevent recurrence of that conduct.

26 U.S.C. § 6700; *Estate Preservation Services.*, 202 F.3d at 1098. Defendant argues the Government fails to state a claim under § 6700 for the following reasons: (1) fails to plead a "tax benefit" as contemplated by the statute; (2) fails to plead Defendant's organization is registered as a "tax shelter" as purportedly required by 26 U.S.C. § 6111 and § 6112; (3) fails to allege that Defendant's members "hold an interest" in his organization, as is purportedly required by the statute; (4) fails to plead a "plan or arrangement"; and (5) § 6700 is unconstitutionally void.

1. 26 U.S.C. § 6700(a)(2)(A): "Any Other Tax Benefit."

One of the five elements of a § 6700 claim is that the false or fraudulent statement that is the subject of the claim be material. To be material, the false statement must have a substantial impact on the decision-making process or produce a substantial tax benefit to a taxpayer. *Schiff*, 269 F. Supp. 2d at 1271 (citing *United States v. Estate Preservation Services*, 38 F. Supp. 2d 846, 855 (E.D. Cal. 1998) (citing *United States v. Buttorff*, 761 F.2d 1056, 1062 (5th Cir. 1985))). "Tax benefits"

1 include: (1) the allowability of any deduction or credit; (2) the
2 excludability of any income; or (3) any other tax benefit. 26
3 U.S.C. § 6700(a)(2)(A).

4 Defendant argues that the complaint is devoid of any
5 allegation of a "tax benefift." Defendant argues that the
6 complaint does not contain allegations that he made false
7 statements regarding (1) the allowability of any deduction or
8 credit or (2) the excludability of any income. Defendant argues
9 that the Government's allegations of misrepresentations regarding
10 non-filing and escaping prosecution are not the types of "tax
11 benefits" contemplated by the statute because the only "tax
12 benefis" contemplated by the phrase "other tax benefits" are
13 "'deductions, credits, income exclusions,' and the like." The
14 Government argues that non-filing and escaping prosecution **are**
15 tax benefits and that they fall under the catch-all provision
16 "other tax benefits." (Doc. 12, Pls.' Mem. 5)

17 Defendant argues that the rules of statutory interpretation
18 require that the phrase "other tax benefit" be interpreted to
19 mean tax benefits similar to deductions, credits, and income
20 exclusions because these phrases appear as part of the same
21 sentence as "other tax benefit." As the Government correctly
22 notes, Defendant's narrow construction of § 6700 is not
23 consistent with how courts have interpreted the phrase "other tax
24 benefit." See *United States v. Raymond*, 228 F.3d 804, 812-13
25 (7th Cir. 2000) (statements that paying taxes was voluntary);
26 *Schiff*, 269 F. Supp. 2d at 1270-71 (statements relating to
27 protecting against prosecution for fraudulently avoiding income
28 tax liability); *Kaun*, 827 F.2d at 1149 (statements relating to

1 stop filing tax returns).

2 Defendant's argument that the Government fails to state a
3 claim under § 6700 for failure to allege a "tax benefit" is not
4 persuasive. Defendant's Motion to Dismiss the Government's
5 § 6700 claim on this ground is **DENIED**.

6
7 **2. 26 U.S.C. §§ 6111, 6112: Registration of a "Tax**
8 **Shelter" and Its Investors.**

9 Defendant argues that the Government's § 6700 claim should
10 be dismissed because the Government fails to allege Defendant's
11 tax shelter was registered with the Government, as required by 26
12 U.S.C. § 6111. Defendant also argues that the Government fails
13 to allege that Defendant, as the organizer of a "potentially
14 abusive tax shelter," failed to maintain a list of investors, as
15 required by 26 U.S.C. § 6112.⁶ The Government correctly notes
16 that the requirements of § 6111 have no connection with the
17 elements to be proved under § 6700. (Doc. 12, Pls.' Mem. 5
18 n. 16) The requirements of § 6112 (and any related provisions of
19 the Code of Federal Regulations) also have no bearing on stating
20 a claim under §6700. Defendant has offered no persuasive
21 authority establishing a link, and there is nothing in the
22 language of the statutes that suggests such a link. Defendant's
23 Motion to Dismiss the Government's § 6700 claim on this ground is
24 **DENIED**.

25
26
27 _____
28 ⁶ Sections 6111 and 6112 were amended in October 2004 by
Pub. L. 108-357, § 815(a) and § 815(b)(2).

3. 26 U.S.C. § 6700(a)(2)(A): "Hold an Interest in the Entity" or "Participate in the Plan or Arrangement."

Defendant argues that the Government fails to state a § 6700 claim because it fails to allege that Defendant promised tax benefits to its customers who *invested* in his organization. Defendant argues the complaint contains no allegation that members of the "Free Enterprise Society" are investors or that they hold some "interest" in it. (Doc. 8, Def.'s Mem. 7)

Section 6700 provides for the liability of persons who make statements regarding a tax benefit that can be falsely or fraudulently obtained "by reason of holding an interest in the entity or participating in the plan or arrangement." 26 U.S.C. § 6700(a)(2)(A). The Government does not dispute that members of Defendant's organization do not "hold an interest" in it. However, the Government also correctly argues that it is not essential for a § 6700 claim that the customers or members "hold an interest" in the plan. (Doc. 12, Pls.' Mem. 7) The statute provides that, to violate the statute, an individual need only to represent that mere "participation" in the organization or plan will confer some (fraudulent) tax benefit. The Government has alleged that Defendant has made statements to the effect that his customers would receive a tax benefit if they "participat[e] directly in the...plan or arrangement." 26 U.S.C. § 6700(a)(2)(A). Defendant's Motion to Dismiss the Government's § 6700 claim on this ground is **DENIED**.

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1 4. **26 U.S.C. § 6700(a)(1)(A)(iii): "Any Other Plan**
2 **or Arrangement."**

3 Defendant's argument under the heading "No Other Plan or
4 Arrangement" on page 8 of his brief relates primarily to his "tax
5 benefit" argument. Liberally construed, however, Defendant's
6 argument can be interpreted as an argument that the Government
7 has failed to allege that Defendant organized a "plan or
8 arrangement." However, as Defendant himself quotes in his brief,
9 Paragraph 21 of the Complaint states that "[t]he Reliance 2000
10 package, W4 package, prior-seminar packages, civil support
11 service, and legal defense fund are plans or arrangements
12 organized and sold by Hempfling...."

13 Defendant does not argue that the Reliance 2000 Package, W4
14 package and seminars do not substantively fall under the category
15 of "plan or arrangement." Without deciding this issue, the court
16 nevertheless notes that plans or arrangements similar to those
17 that the Government alleges are organized and sold by Plaintiff
18 have been held to be "abusive tax shelters" within the definition
19 of § 6700. *Schiff*, 269 F. Supp. 2d at 1266-67; *Kaun*, 827 F.2d at
20 1149; *United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985);
21 *United States v. Cohen*, 222 F.R.D. 652, 655 (W.D. Wash. 2004);
22 *United States v. Cohen*, 2005 WL 1491978 at *2, 95 A.F.T.R.2d
23 2005-2716 (W.D. Wash. May 13, 2005).

24 Defendant's Motion to Dismiss the Government's § 6700 claim
25 on this ground is **DENIED**.

26
27 5. **Whether § 6700 Is Unconstitutionally Vague.**

28 The "void-for-vagueness" doctrine holds that a statute is

1 unconstitutionally vague if it fails to "give the person of
2 ordinary intelligence a reasonable opportunity to know what is
3 prohibited, so that he may act accordingly." *Grayned v. City of*
4 *Rockford*, 408 U.S. 104, 108 (1972) ("It is a basic principle of
5 due process that an enactment is void for vagueness if its
6 prohibitions are not clearly defined."). The standard to be
7 employed in determining vagueness depends on the statute at
8 issue.

9 Challenges to tax or civil laws that do not implicate First
10 Amendment rights are usually considered under a "specific" test,
11 i.e., whether the statute is vague as applied to the facts at
12 hand. *United States v. MacKenzie*, 777 F.2d 811, 816 (2d Cir.
13 1985); *United States v. Mazurie*, 419 U.S. 544, 550 (1975);
14 *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*,
15 455 U.S. 489, 495 n. 7 (1982); see also *Hersch v. United States*,
16 685 F. Supp. 325, 327 (E.D.N.Y. 1988). The question under the
17 "specific test" is whether the statute reasonably gives notice to
18 the individual being charged with a violation that his conduct
19 likely constituted a violation. If an individual's conduct is
20 clearly a violation of a statute, the individual cannot succeed
21 with a vagueness challenge, regardless of whether the language of
22 the statute may be far-reaching. *Parker v. Levy*, 417 U.S. 733,
23 756 (1974). If a statute is vague under the specific test, it is
24 not necessarily void altogether. It is only unconstitutional as
25 applied to the particular situation at issue.

26 Challenges to criminal laws, as well as to some civil laws,
27 are also analyzed under the facial validity test. If a statute
28 is facially vague, then it is void under all circumstances as

1 opposed to in one particular situation. The facial validity test
2 has two separate but related inquiries, overbreadth and
3 vagueness. The first question is whether the statute is
4 overbroad, i.e., whether, on its face, it "reaches a substantial
5 amount of constitutionally protected conduct." *Hoffman Estates*,
6 455 U.S. at 494-95. If the answer is yes, then the statute is
7 overbroad and therefore void. If the answer is no, the statute
8 may still be challenged on facial vagueness grounds.

9 In challenges to the "facial validity of an ordinance on
10 vagueness grounds outside the domain of the First Amendment," the
11 challenger "must demonstrate that 'the enactment is impermissibly
12 vague in all of its applications.'" *Hotel and Motel Ass'n of*
13 *Oakland v. City of Oakland*, 344 F.3d 959, 972 (9th Cir. 2003)
14 (quoting *Hoffman Estates*, 455 U.S. at 494-95)). In other words,
15 where the statute at issue does not implicate First Amendment
16 rights, the party challenging the statute must demonstrate that
17 "no set of circumstances exists under which the [statute] would
18 be valid." *Id.* (quoting *United States v. Salerno*, 481 U.S. 739,
19 745 (1987)). In cases where the First Amendment is implicated,
20 however, the challenger need not necessarily demonstrate that the
21 statute is vague in all applications. *California Teachers Ass'n*
22 *v. State Bd. of Educ.*, 271 F.3d 1141, 1149 n. 7 (9th Cir. 2001).

23 Although some cases hold that challenges to tax or civil
24 statutes are analyzed only under the specific test, the facial
25 vagueness test has been applied to civil statutes outside the
26 domain of the First Amendment. See e.g., *Hotel and Motel*, 344
27 F.3d 959. Defendant here does not succeed regardless of which
28 test applies. Defendant offers no persuasive argument or

1 authority for vagueness as applied to him specifically or to the
2 statute on its face.

3 Here, Defendant argues the phrases "tax benefit" and "plan
4 or arrangement" are unconstitutionally vague. Under the specific
5 test, Defendant must demonstrate that § 6700 is vague and
6 ambiguous as applied to him. *MacKenzie*, 77 F.2d at 816.

7 Defendant offers no persuasive argument that the terms "tax
8 benefit" and "plan or arrangement" are vague as applied to him.
9 Defendant's conduct, as alleged by the Government, falls squarely
10 within the terms of the statute. The "tax benefits" Defendant
11 offers through sale of his commercial tax products are not paying
12 income taxes and escaping monetary tax liability. The language
13 of the statute and the application of the statute by the courts
14 are sufficiently clear to have put Defendant on notice that non-
15 payment of taxes owed are the benefits contemplated by the
16 statute. See *Raymond*, 228 F.3d at 812-13 (statements that paying
17 taxes was voluntary); *Schiff*, 269 F. Supp. 2d at 1270-71
18 (statements relating to protecting against prosecution for
19 fraudulently avoiding income tax liability); *Kaun*, 827 F.2d at
20 1149 (statements relating to stop filing tax returns).

21 Also, the language of the statute and the statute's
22 application are sufficiently clear to have put Defendant on
23 notice that his sale of commercial tax products such as the
24 Reliance 2000 package, the W4 package, and the seminars, are the
25 types of "plans or arrangements" contemplated by the statute.
26 For example, in *Kaun*, the Seventh Circuit held that the
27 defendant's seminars, pamphlets, and information kits promoting
28 tax evasion constituted a violation of § 6700. 827 F.2d at 1148

1 ("The words 'any other plan or arrangement' are clearly broad
2 enough to include a tax protester group."); *see also Schiff*, 379
3 F.3d at 627 (describing books, seminars, and other materials
4 promoted by defendant in § 6700 case). Here, Defendant's
5 seminars, pamphlets, and commercial tax packages are not
6 significantly distinguishable from those in *Kaun* and *Schiff*.

7 Second, Defendant fails to meet his burden under the facial
8 vagueness test. To succeed under the facial vagueness test,
9 Defendant must show that the statute is vague in all of its
10 applications, unless he can show that the statute implicates
11 First Amendment freedoms. *Hotel and Motel*, 344 F.3d at 972;
12 *Hoffman Estates*, 455 U.S. at 494-95. Defendant offers no
13 persuasive argument or authority as to either prong.

14 Defendant first argues that § 6700 implicates First
15 Amendment rights and that § 6700 should be analyzed under
16 heightened scrutiny. Defendant's argument is not persuasive.
17 Section 6700 does not implicate the First Amendment. Section
18 6700 prohibits, among other things, the sale or offer for sale of
19 false or fraudulent tax advice or other representations about the
20 tax laws. The sale or advertisement of tax advice or other
21 representations regarding the tax laws is commercial speech.
22 *Schiff*, 379 F.3d at 629-30 (holding that district court did not
23 abuse discretion in enjoining publication of defendant's book to
24 the extent that the book constituted advertising by claiming that
25 readers could lawfully avoid paying income taxes with the help of
26 defendant's commercial tax products); *Hersch*, 685 F. Supp. at 329
27 ("Plaintiff's representations were...made in connection with his
28 efforts to promote a scheme of tax shelters and thus constitute

commercial speech.") (citing cases); *United States v. Bell*, 414 F.3d 474, 481 (3d Cir. 2005) (holding that defendant's offers for sale of commercial tax products, including information packets and seminars on tape, constituted commercial speech); see also *Estate Preservation Services*, 202 F.3d at 1106 (upholding Section 7408 injunction against First Amendment challenge on the grounds that the injunction "proscribes only fraudulent conduct"). Commercial speech receives some protection under the First Amendment, but false or fraudulent commercial speech does not. See *Schiff*, 379 F.3d at 626, 630; *Central Hudson*, 447 U.S. at 562-63; *Bell*, 238 F. Supp. 2d at 703-4 (citing cases). Because § 6700 prohibits false or fraudulent commercial speech, it does not implicate the First Amendment.

The test that therefore applies requires Defendant to demonstrate that § 6700 is vague in all possible applications. *Hotel and Motel*, 344 F.3d at 972; *Hoffman Estates*, 455 U.S. at 494-95. Defendant has not met this burden. Many cases have found violations of § 6700 without any difficulty in applying "tax benefit" or "plan or arrangement" to tax evasion schemes. *Schiff*, 269 F. Supp. 2d at 1266-67; *Kaun*, 827 F.2d at 1149; *United States v. White*, 769 F.2d 511, 515 (8th Cir. 1985); *United States v. Cohen*, 222 F.R.D. 652, 655 (W.D. Wash. 2004); *United States v. Cohen*, 2005 WL 1491978 at *2, 95 A.F.T.R.2d 2005-2716 (W.D. Wash. May 13, 2005).

Defendant's Motion to Dismiss the Government's § 6700 claim on void-for-vagueness grounds is **DENIED**.

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1 C. Defendant's Rule 12(b)(6) Motion to Dismiss the
2 Government's Claim for an Injunction under § 7402.

3 Defendant argues that § 7402 alone cannot be the basis for
4 an injunction. Defendant also argues that the Government's
5 complaint mischaracterizes § 7402 in claiming that it can bar
6 Defendant's interference with enforcement of the internal revenue
7 laws, even when no particular law has been violated. Defendant's
8 arguments are misplaced. The language of § 7402 alone is clear:
9 "The district courts...shall have such jurisdiction to make and
10 issue in civil actions...orders of injunction...and to render
11 such judgments and decrees as may be necessary or appropriate for
12 the enforcement of the internal revenue laws." 26 U.S.C. § 7402.

13 Also, as the Government points out, § 7402 has long been
14 employed by federal district courts to enjoin tax evasion
15 activities similar to those Defendant is alleged to have
16 committed. *United States v. Ernst & Whitney*, 735 F.2d 1296,
17 1300, 1306 (11th Cir. 1984) (holding that there is no requirement
18 to make a showing that a party has violated a particular section
19 of the Internal Revenue Code for district court to have authority
20 under § 7402 to issue injunction); *United States v. Bell*, 238 F.
21 Supp. 2d 696, 699-700, 705 (M.D. Penn. 2003), *aff'd*, 414 F.3d 474
22 (3d Cir. 2005) (issuing injunction under § 7402 where defendant
23 sold information packets and seminar tapes with false tax
24 advice); *United States v. Cohen*, 222 F.R.D. 652, (W.D. Wash.
25 2004) (issuing injunction under both § 7408 and § 7402 against
26 defendant asserting that the federal income tax is a "hoax" and
27 that individuals are not required to file federal income taxes);
28 *United States v. Rivera*, 2003 WL 22429482, 92 A.F.T.R.2d 2003-

6844 (C.D. Cal. July 18, 2003) (issued injunction under both § 7408 and § 7402 against defendant who offered for sale tax advice that private employers are not required to withhold federal taxes from their employees wages and that individuals are not required to file federal income taxes).

Defendant's argument that the district court lacks authority to issue an injunction under § 7402 is without merit. This court has such authority based on the express terms of the statute and on the application of § 7402 by other courts in similar situations. Defendant's Motion to Dismiss the Government's claim for an injunction under § 7402 is **DENIED**.

C. Defendant's "Motion for Summary Judgment."

In the alternative to his Motion to Dismiss, Defendant brings a "Motion for Summary Judgment." Defendant argues that the Government should be estopped from bringing this action against Defendant based on Defendant's contention that the Government's attorney led him to believe he was not violating the law in a July 2004 telephone conversation. In addition, the Government construes two conclusory statements in Defendant's declaration a summary judgment motion on the issue of whether Defendant violated § 6700 and § 6701.⁷ Defendant's estoppel

⁷ The Government construes conclusory statements in Defendant's declaration as a Motion for Summary Judgment on the § 6700 and § 6701 claims:

28. I have never knowingly or intentionally made a false or fraudulent statements [sic] as to any material matter with respect to the allowability of any deduction or credit, the excludability of

1 argument can be decided as a matter of law. However, the
 2 arguments regarding violations of § 6700 and § 6701 will not be
 3 considered. Defendant has filed no Statement of Undisputed
 4 Facts, as is required by LR 56-260(a). Little if any discovery
 5 has been conducted in this case. Finally, these issues were not
 6 presented in a properly noticed summary judgment motion and will
 7 therefore not be construed as such.

8 Equitable estoppel may be asserted against the Government,
 9 but in order to do so, a party must first show that (1) the
 10 Government engaged in "affirmative misconduct going beyond mere
 11 negligence;" (2) that the Government's misconduct will cause
 12 serious injustice; and (3) that the estoppel will not harm the
 13 public interest. *Watkins v. United States Army*, 875 F.2d 699,
 14 706-7 (9th Cir. 1988); *Pauly v. United States Dep't of Agric.*,
 15 348 F.3d 1143, 1149 (9th Cir. 2003) (quoting *S & M Inv. Co. v.*
 16 *Tahoe Reg'l Planning Agency*, 911 F.2d 324, 329 (9th Cir. 1990)).

18 any income, or the securing of any other tax
 19 benefit by reason of holding an interest in any
 20 entity or participating in any plan or arrangement
 21 which I knew or had reason to know was false or
 22 fraudulent as to any material matter as
 23 contemplated within 26 U.S.C. Section 6700, nor
 24 have I ever sold or participated in any type of
 25 tax shelter, abusive or otherwise as contemplated
 26 under 26 U.S.C. Sections 6700 or 6701.

27 29. I have never knowingly or otherwise, aided,
 28 assisted in, procured, or advised with respect to
 the preparation or presentation of any portion of
 a return, affidavit, claim or other document as
 contemplated under 16 U.S.C. Section 6700 and
 6701.

(Doc. 9, Hempfling Decl. ¶¶ 28, 29) These conclusory denials do
 no more than dispute the Government's claims.

1 Once a party establishes that estoppel may be asserted against
2 the Government, the party must then establish the four elements
3 necessary to prove equitable estoppel: "(1) the party to be
4 estopped must know the facts; (2) he must intend that his conduct
5 shall be acted upon, or must so act that the party asserting the
6 estoppel had the right to believe that it was so intended;
7 (3) the latter must be ignorant of the true facts; and (4) he
8 must rely upon the conduct to his injury." *Watkins*, 875 F.2d at
9 709 (9th Cir. 1988) (quoting *United States v. Wharton*, 514 F.2d
10 406, 412 (9th Cir. 1975)).

11 Defendant argues the Government should be estopped from
12 bringing this case against him because Mr. Davis represented to
13 Defendant in a July 2004 telephone conversation that Defendant's
14 actions were not illegal. In his declaration, Defendant states
15 that what Mr. Davis actually told him was that "from what [Mr.
16 Davis] had seen," Defendant's actions would not fall under 26
17 U.S.C. § 6700 and that Mr. Davis was "undecided" as to how to
18 proceed with Defendant's case. (Doc. 9, Hempfling Decl. ¶¶ 5,
19 16; see also ¶ 12 ("Mr. Davis explained to me that there were
20 several elements which he needed to look for prior to bringing an
21 action under 26 U.S.C. Section 6700.")) The Government disputes
22 Defendant's representations regarding what was said during the
23 July 2004, but argues that even if Defendant's characterization
24 of the facts was correct, Defendant cannot succeed on his
25 estoppel claim.

26 Defendant must first establish the foundation for an
27 estoppel claim against the Government in the first place. First,
28 Defendant argues that Mr. Davis engaged in affirmative misconduct

1 by representing to him that "the government was satisfied that
2 the defendant was neither promoting nor selling anything which
3 would be considered an abusive tax shelter." However,
4 Defendant's statements in his own declaration defeat this
5 argument. To show affirmative misconduct, a party must show
6 misrepresentation or concealment of a material fact, although it
7 is not necessary to show intent to deceive. *Watkins*, 875 F.2d at
8 707. Defendant admits that Mr. Davis told him that the
9 Government was undecided as to whether to bring a \$ 6700 action
10 against him. (Doc. 9, Hempfling Decl. ¶¶ 5, 12, 16) Defendant
11 has not asserted that, at the time he made this statement,
12 Mr. Davis was misrepresenting any fact. As the Government points
13 out, it had nothing to gain by delaying instituting an injunction
14 suit against a tax protester. (Doc. 12, Pl.'s Opp. 13)
15 Defendant has not established the "affirmative misrepresentation"
16 element, even if his version of the facts were accepted and not
17 disputed.

18 Second, Defendant cannot establish that a substantial
19 injustice will occur if the Government is not estopped from
20 bringing this action against him. Defendant admits that
21 Mr. Davis told him the Government had not yet decided to bring a
22 suit against him. Defendant did not change his position to his
23 detriment based on Mr. Davis' purported statement and is in no
24 worse position than if he had not spoken to Mr. Davis.

25 Third, Defendant cannot establish that there is no undue
26 harm to the public interest if this case were not allowed to
27 proceed. As the Government notes, "[t]he present injunction
28 action is directed at halting Hempfling's false and fraudulent

1 actions, which harm the public and his customers in particular.”
2 (Doc. 12, Pl.’s Opp. 13) Defendant has failed to establish the
3 elements necessary to bring an estoppel claim against the
4 Government.

5 Even if Defendant could bring an estoppel claim against the
6 Government, Defendant’s estoppel claim cannot succeed because he
7 fails to establish the four required elements for estoppel.
8 These four elements are: (1) that Mr. Davis knew that the
9 Government intended to later prosecute Mr. Davis under § 6700;
10 (2) that Mr. Davis intended that his phone call would induce
11 Defendant to continue to act to violate the law; (3) that
12 Defendant was ignorant of the Government’s alleged intent to
13 later prosecute him; and (4) that Defendant relied on Mr. Davis’
14 representations to his detriment. Defendant’s estoppel claim is
15 based on the premise that Mr. Davis falsely represented to
16 Defendant that Defendant’s actions did not constitute a violation
17 of § 6700. However, Defendant admits in his own declaration that
18 this is not what Mr. Davis told him. Defendant has offered no
19 evidence that Mr. Davis called him in July 2004 with the intent
20 to induce him to continue to violate the internal revenue laws.
21 Defendant wanted to continue his tax advice business. He does
22 not allege he had any intent of discontinuing his business under
23 any circumstances.

24 Even if Defendant’s motion for summary judgment were
25 properly before the court, Defendant has, through his own
26 statements, failed to establish the absence of a genuine issue of
27 material fact. Defendant’s Motion for Summary Judgment on
28 equitable estoppel grounds is **DENIED**.

VI. CONCLUSION

For all the foregoing reasons, Defendant's motion to dismiss Plaintiff's complaint is **DENIED** on all grounds, except under Rule 9(b). Plaintiff shall have twenty (20) days to amend. Defendant shall have twenty (20) days to file a response.

To the extent Defendant moves for summary judgment on estoppel and any other grounds, its motion is **DENIED**.

The Government's Rule 56(f) motion for additional time to conduct discovery is **MOOT**.

SO ORDERED.

DATED: September 23, 2005.

/s/ OLIVER W. WANGER

Oliver W. Wanger
UNITED STATES DISTRICT JUDGE